No. 83-1240
No. 83-1065

IN THE

Supreme Court of the United States

October Term, 1983

THE STATE OF NEW YORK,

Petitioner,

against

THE ONEIDA INDIAN NATION OF NEW YORK STATE, a/k/a THE ONEIDA NATION OF NEW YORK, a/k/a THE ONEIDA INDIANS OF NEW YORK; THE ONEIDA INDIAN NATION OF WISCONSIN, a/k/a THE ONEIDA TRIBE OF INDIANS OF WISCONSIN, INC.; and THE ONEIDA OF THE THAMES BAND COUNCIL; and THE COUNTY OF ONEIDA, NEW YORK and THE COUNTY OF MADISON, NEW YORK,

Respondents.

THE COUNTY OF ONEIDA, NEW YORK and THE COUNTY OF MADISON, NEW YORK,

Petitioners,

against

THE ONEIDA INDIAN NATION OF NEW YORK STATE, *et al.*,

Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Reply Brief of the State of New York, Petitioner in No. 83-1240

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Dated: September, 1984

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Reply Brief of the State of New York, Petitioner in No. 83-1240.

In Point I we will discuss some matters presented by the Indian tribes and the Solicitor General, while in Point II we deal with issues presented by the counties as respondents.

POINT I.

A.

Neither this Court's prior decision in this case (*Oneida Indian Nation v. County of Oneida*, 414 US 661 [1974]; *"Oneida I"*), nor any of the other authorities relied upon by the respondents in their respective briefs, support the existence of a federal common law right of action for damages in behalf of the Indian tribes against the petitioner counties.

In *Oneida I*, this Court, addressing solely the issue of jurisdiction, held that the claims asserted by the Oneidas in this action raised questions of federal law subject to federal court jurisdiction. Specifically exempted from discussion was any aspect of the merits of the claim:

> "* * * we think that the basis for petitioners' assertion that they had a federal right to possession governed wholly by federal law cannot be said to be so insubstantial, implausible, foreclosed by prior decisions of this Court, or otherwise completely devoid of merit as not to involve a federal controversy within the jurisdiction of the District Court, *whatever may be the ultimate resolution of the federal issues on the merits.*" 414 US at 666-667; emphasis supplied.

The Court said further, 414 US at 675:

> "Enough has been said, we think, to indicate that the complaint in this case asserts a present right to possession under federal law. *The claim may fail at a later state for a variety of reasons;* but for jurisdictional purposes, this is not a case where the underlying right or obligation arises only under state law and federal law is merely alleged as a barrier to its effectuation * * * ." Emphasis supplied.

Since it is settled law that "a failure to state a proper cause of action calls for a judgment on the merits" (*Bell v. Hood*, 327 US 678, 682 [1946]), and since this Court specifically refrained from addressing the merits of the Oneidas' claim in ruling on the jurisdictional issue, it is clear that the Oneidas' reliance on that decision as determining the existence of a right of action here is wholly unwarranted.* Moreover, the fact that the federal courts have recognized the existence of "tribal property rights" does not, as the Oneidas suggest (Brief of Oneida Nations of Wisconsin and New York, pp 10-13; Brief of Oneida of the Thames Bank Council, pp 8-12), support the existence of a federal common law right of action in their behalf. It is a long step indeed from the recognition of a "property right" to the creation of a *federal* "right of action" under the *federal* common law for the recovery of damages based upon an infringement of such a property right. See,

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*Cf. *Burks v. Lasker*, 441 US 471 (1979), where the Court, "assuming" the existence of an implied right of action for damages under the Investment Advisers Act of 1940, noted that "[t]he question whether a cause of action exists is not a question of jurisdiction, and therefore may be assumed without being decided". 441 US at 476, n 5. Six months later, in *Transamerica Mortgage Advisors, Inc. v. Lewis*, 444 US 11 (1979), the Court decided that the right of action it "assumed" in *Burks* did not, in fact, exist. 444 US at 24.

Wheaton v. Peters, 33 US (8 Pet) 590 (1834); see also, Crane, *Congressional Intent or Good Intentions: The Inference of Private Rights of Action Under the Indian Trade and Intercourse Act,* 63 Boston Law Rev 853, 856-857 (1983). As was observed by Judge Meskill in his dissenting opinion (JA 250a):

> "There never has been, and this Court should not now create, a federal common law action. No case has ever held that an Indian tribe may maintain a direct action for damages based upon federal common law."

The Oneidas' contentions to the contrary should be rejected.

B.

In arguing that the Congress intended the Indian tribes to have a right of action under the Trade and Intercourse Act of 1793, the Oneidas rely heavily (Brief of Oneida Nations of Wisconsin and New York, pp 5, 30-31; Brief of Oneida of the Thames Band Council, pp 15, 28) upon the so-called "White Man's Burden" statute, 25 USC § 194, which was originally enacted in 1822, 3 Stat 682, and was later incorporated into the 1834 Trade and Intercourse Act, 4 Stat 729. This reliance is misplaced for several reasons.

First, insofar as the 1793 Trade and Intercourse Act is concerned, the views of the 1822 Congress are not directly relevant. See, e.g., *United States v. Oswego Barge Corp.,* 664 F2d 327, 342, n 22 (2d Cir, 1981); cf. *Merrill Lynch, Pierce, Fenner & Smith v. Curran,* 456 US 353, 377-378 (1982). In addition, as this Court observed in *Wilson v.*

Omaha Indian Tribe, 442 US 653, 668 (1979), the Congress, in adopting the 1822 Act, "had in mind *only* disputes arising in Indian country, disputes that would not arise in or involve any of the States". Emphasis supplied. Moreover, when Congress enacted the 1834 Trade and Intercourse Act, it made the provisions of the Act, including the "White Man's Burden" statute, applicable only west of the Mississippi River; as to those Indian tribes in the east, the 1802 Act, which did not contain a burden of proof provision, remained effective. 4 Stat 729, 734. Thus, quite contrary to the Oneidas' assertions, 25 USC § 194 is not a reliable indicator of congressional intent vis-a-vis the 1793 Trade and Intercourse Act.

Furthermore, because tribal Indians did not have access to the federal courts in 1822 (see *Felix v. Patrick,* 145 US 317 [1892]), it is in any event unlikely that Congress intended by the enactment of the burden of proof statute to indicate that the Trade and Intercourse Acts created a private right of action in behalf of the Indian tribes. A more likely explanation, as noted by Judge Meskill in his dissenting opinion (JA258a), is that the provision was intended to apply, for example, to suits in which the government was seeking to enforce Indians' rights on their behalf. In such cases, the Indians would be the real parties in interest, and the burden of proof would not be with the government as plaintiff guardian. This explanation is not only consistent with the statute's language, but lends additional support to our view that judicial enforcement of the Trade and Intercourse Acts, if it is to be had at all, may only be initiated by the government.

C.

The Oneida Nations of Wisconsin and New York, and the United States in its brief as *amicus curiae,* suggest that

28 USC § 1362 supports the existence of a federal right of action in the Oneidas (Brief of Oneida Nations of Wisconsin and New York, pp 5, 31; Brief of United States as *Amicus Curiae,* pp 11-12). However, 28 USC § 1362 is a jurisdictional statute and thus cannot create any substantive rights. This point was made clear in *United States v. Mitchell,* 445 US 535 (1980).

There the claimants, individual allottees of land contained in the Quinault Reservation, the Quinault Tribe, and the Quinault Allottees Association, brought an action in the Court of Claims for money damages against the United States for alleged mismanagement of forest lands allotted to them under the Indian General Allotment Act of 1887. In reversing a decision of the Court of Claims this Court had occasion to discuss two jurisdictional statutes, the Tucker Act, 28 USC § 1491, and the Indian Claims Commission Act, 28 USC § 1505. The Court stated, 445 US at 538-540:

> "The individual claimants in this action premised jurisdiction in the Court of Claims upon the Tucker Act, 28 U.S.C. § 1491, which gives that court jurisdiction of 'any claim against the United States founded either upon the Constitution, or any Act of Congress.' The Tucker Act is 'only a jurisdictional statute; it does not create any substantive right enforceable against the United States for money damages.' *United States v. Testan,* 424 U.S. 392, 398 (1976). The Act merely 'confers jurisdiction upon [the Court of Claims] whenever the substantive right exists. *Ibid.* * * *
>
> "The same is true for the tribal claimant. Jurisdiction over its claims was based on § 24 of the Indian Claims Commission Act, 28 U.S.C. § 1505.

> * * * By enacting this statute Congress plainly intended to give tribal claimants the same access to the Court of Claims provided to individuals by the Tucker Act. * * *
>
> * * *
>
> "Under 28 U.S.C. § 1505, then, tribal claimants have the same access to the Court of Claims provided to individual claimants by 28 U.S.C. § 1491, and the United States is entitled to the same defenses at law and equity under both statutes. It follows that 28 U.S.C. § 1505 no more confers a substantive right against the United States to recover money damages than does 28 U.S.C. § 1491." (Footnote omitted.)*

In this regard, cf. *Moe v. Salish and Kootenai Tribes,* 425 US 463, 474, n 13 (1976).

These same considerations apply with equal force to the case at bar. 28 USC § 1362 cannot be viewed as conferring any substantive rights upon the Oneidas.

D.

The Oneida Nations of Wisconsin and New York and the United States mistakenly argue that the final *proviso* contained in 25 USC § 233 renders the New York statute of limitations inapplicable to this action (Brief of Oneida Nations of Wisconsin and New York, p 41; Brief of United States as *Amicus Curiae,* pp 6, 21-22). The

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*This holding was reaffirmed in *United States v. Mitchell,* ___ US _____, 77 L Ed 2d 580, 590-591 (1983).

language relied upon* does not, as is contended by the Oneidas, "specifically [exempt] New York tribes from application of any state statute of limitations." (Brief of Oneida Nations of Wisconsin and New York, p 41). A fair reading of the statutory *proviso* reveals that, far from prohibiting the application of New York law as a frame of reference in appropriate cases, the Congress wished thereby only to make clear its view that, at least insofar as Indian land claims were concerned, federal law was to control in the first instance. But the adoption by a federal court of a state statute of limitations where no federal limitations period has been provided by Congress is a matter strictly of federal and not state law. *Auto Workers v. Hoosier Cardinal Corp.* 383 US 696 (1966). Since a state statute of limitations, once "borrowed", becomes, within the context of an action, a *federal* law, *id.*, the statutory language relied upon by the Oneidas and the United States cannot, as they suggest, act to abrogate the general rule, even in those cases relating directly to New York Indians.

Nor, contrary to the contentions of the Oneidas and the United States, would the application of New York's statute of limitations to this action be "inconsistent" with the policies underlying the 1793 Trade and Intercourse Act. At base, it is the Oneidas' position, apparently shared by the United States, that the application of New York's statute of limitations would be "inconsistent" with federal Indian policy simply because, were the statute to be applied, it would cause them to lose the litigation (Brief of Oneida Nations of Wisconsin and New York, p 42; Brief

*"*Provided further*, that nothing herein contained shall be construed as conferring jurisdiction on the courts of the State of New York or making applicable the laws of the State of New York in civil actions involving Indian lands or claims with respect thereto which relate to transactions or events transpiring prior to September 13, 1952." (September 13, 1952 was the effective date of the statute.)

of Oneida of the Thames Band Council, pp 36-37). However, this Court has made clear that " 'a state statute cannot be considered "inconsistent" with federal law merely because the statute causes the plaintiff to lose the litigation' ". *Board of Regents v. Tomanio,* 446 US 478, 488 (1980), quoting from *Robertson v. Wegmann,* 436 US 584, 593 (1978). Thus, in *Occidental Life Ins. Co. v. EEOC,* 432 US 355 (1977), this Court did not hold the state limitations statute inconsistent with federal law merely because it barred the claim. Rather, it refused to adopt California's one-year statutory limitations period because, given the administrative functions of the EEOC, the period was too short, as a practical matter, to permit the agency to sue at all in many cases. This would not only have frustrated the underlying Congressional goal of conciliation, but would, in effect, have rendered nugatory the right of the EEOC to sue. See 432 US at 367-369.

Here, the most nearly analogous New York State statute of limitations is contained at New York Civil Practice Law and Rules, § 212, which provides a ten-year period for the recovery of property. But in 1795, when the transaction complained of was consummated, the limitations period was 50 years (Laws of New York of 1788, ch 43,* § III). This period was reduced to 25 years in 1801 (L 1801, ch CLXXXIII). There is no reason to believe that either period was too short to permit the Oneidas to pursue whatever claim they might have possessed under the 1793 Trade and Intercourse Act.

E.

While the Solicitor General argues (Br, pp 9-19) that the Court should imply a private right of action on behalf of the Indians, it appears to us that his later discussion (Br, pp 28-30, 33-40) describing the equitable considerations

*This was mistakenly referred to in our principal brief at page 31 as "63".

that may warrant limiting or denying relief in future Indian land claim actions is directly applicable to a proper resolution of the present case. As we have explained (Main Br, p 29), Judge Meskill properly concluded in his dissent below that many of the factors alluded to by the Solicitor General show why it would be inappropriate to imply a private right of action in the Indians at this late date of our history (e.g., JA249a). This is not to say that the rights of the Indians could not be vindicated under the Trade and Intercourse Act or the relevant Treaties, but only that the remedy envisioned 190 years ago—vindication through actions initiated by the President—should be utilized. If the Treaties with the Oneidas under which the lands at issue were acquired by the State of New York should, contrary to our view, be found not to have been ratified, then it seems clear that an overall remedy can be proposed by the President pursuant to section 5 of the Trade and Intercourse Act, an alternative not available to the courts responding to a series of suits. Implying private rights of action in these cases is not only unwarranted under the applicable laws but could, indeed, lead to great mischief.

POINT II.

A.

The counties argue that New York, like Alabama in *Parden v. Terminal Railway Co.*, 377 US 184 (1964), had impliedly waived its immunity to suit by engaging in "a proprietary activity, undertaken chiefly for the purpose of making a profit" (Brief of Counties of Oneida and Madison, as respondents in No. 83-1240, p 19). While this argument has no merit, as we will discuss, we believe it important to point out again, as we did in our opening brief

(p 41), that this Court has no occasion even to reach the governmental-proprietary activity issue in view of its decision in *Edelman v. Jordan,* 415 US 651 (1974). Moreover, even if the State's acts in dealing with the Oneidas were viewed as a waiver of immunity insofar as the Oneidas are concerned, such a waiver would not properly be viewed as extending to the counties.

The counties' contention that the State's motivation in securing possession of the subject lands and making them available for settlement was "chiefly for the purpose of making a profit" (Br, p 19) is belied by the solicitude which the State of New York, as mortgagee and bondholder, showed towards those settlers to whom it had sold land and who were unable to meet their obligations. Between the years 1801 and 1811, no fewer than five enactments granting relief to the purchasers of land in what formerly had been the Oneida, Onondaga and Cayuga reservations were passed into law by the State Legislature (L 1801, ch 134, L 1803, ch LXI, L 1808, ch CLI, L 1810, ch CXVII, L 1811, ch CCXVII).* These enactments, which forgave defalcations in the payment of both interest and principal and stayed prosecutions based upon such defalcations, demonstrate quite clearly that the interest of the State in purchasing the subject lands was "settlement" and not "profit". This is a sovereign concern and the State was not engaging in private enterprise.

B.

The counties also make much of the fact that the Trade and Intercourse Act of 1793 was enacted after the decision of this Court in *Chisholm v. Georgia,* 2 US (2 Dall.) 419 (1793), and before the ratification of the Eleventh Amendment (Br, p 14, n 10). They argue that the Congress which enacted the 1793 Act must, in light of the controversy surrounding *Chisholm,* have been aware that the federal

*For the convenience of the Court, copies of these enactments are reproduced in the Appendix to this brief.

judiciary then considered the States to be "generally subject to suit in federal court", and would, if it wished to exclude them from suits under the Trade and Intercourse Act, specifically have so provided (Br, p 19). However, the decision in *Chisholm v. Georgia* was not as broad-based as the counties would have the Court believe. Far from abrogating the fundamental principle of sovereign immunity, *Chisholm* held only that under the express language of Article III, section 2 of the Constitution, a State was liable to be sued by a citizen of another State, or of a foreign country; the immunity of the States from suits brought by their own citizens remained, under that decision, unaffected and unimpaired. Hence, the counties are wrong when they assert that "clear indication of congressional intent to subject states to suit [under the 1793 Trade and Intercourse Act] should *not* be required" (Br, p 19; emphasis in original). In view of the "shock of surprise" created by the *Chisholm* decision (*Monaco v. Mississippi*, 292 US 313, 325 [1934]), and the fact that the holding there did not speak to the immunity of States from suits by their own citizens, there is no reason to assume that the Congress in 1793 would, by its silence, have intended to deprive the States of that immunity. As this Court recently observed in *Pennhurst State School and Hospital v. Halderman*, _____ US _____, 79 L Ed 2d 67, 76-77 (1984):

> "The [Eleventh] Amendment's language overruled the particular result in *Chisholm*, but this Court has recognized that its greater significance lies in its affirmation that the fundamental principle of sovereign immunity limits the grant of judicial authority in Art III. Thus, in *Hans v. Louisiana*, 134 US 1, 33 L Ed 842, 10 S Ct 504 (1890), the Court held that, despite the limited terms of the Eleventh Amendment, a federal court could not entertain a suit brought by a citizen against his own

> State. After reviewing the constitutional debates concerning the scope of Art III, the Court determined that federal jurisdiction over suits against unconsenting States 'was not contemplated by the Constitution when establishing the judicial power of the United States'. *Id.*, at 15, 33 L Ed 842, 10 S Ct 504. See *Monaco v. Mississippi, supra,* at 322-323, 78 L Ed 1282, 54 S Ct 745 (1934). In short, the principle of sovereign immunity is a constitutional limitation on the federal judicial power established in Art III * * * ." (Footnote omitted.)

CONCLUSION.

For the reasons stated here and in the State's principal brief, the judgment of the Court of Appeals should be reversed.

Dated: Albany, New York
September, 1984

Respectfully submitted,

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APPENDIX.

LAWS OF NEW YORK.

CHAP. 134.

AN ACT granting relief to purchasers of lands in the late Oneida Onondaga and Cayuga reservations.

Passed the 3rd of April, 1801.

Be it enacted by the People of the State of New York, represented in Senate and Assembly, That all interest already accrued, or which may accrue before the first Tuesday in July next upon the mortgages for any lands which were either sold at public auction by the people of this State, or were purchased by persons having the right of pre-emption, situate in the late Oneida and Cayuga reservations, and also two years interest in arrear in the lands so circumstanced in the Onondaga reservation, shall be and hereby are remitted to the purchasers of the same lands respectively and their assigns, being actual settlers on the said land, at the time of the passing of this act, so that in all cases of stipulations made upon the sale or assignment of any of the said lands for or including the payment of any interest upon any of the said mortgages, the said remission shall inure to the benefit of the persons assuming the payment of the same, being settlers on the said lands as aforesaid: And the surveyor general of this State upon receiving satisfactory evidence from any person claiming the benefit of such remission, that he is entitled thereto, shall and he is hereby directed to enter such remission of interest upon the mortgage to the people of this State of the land on which such claimant resides.

And be it further enacted, That an interest of three per centum only, for the period of five years, shall be demanded upon all mortgages of lands which were sold at public vendue as aforesaid in the said Cayuga reservation, subject nevertheless to the restriction and limitations contained in the preceding clause.

And be it further enacted, That the comptroller shall immediately after the passing of this act, credit Peter Smith towards the principal of his mortgage upon lands in the late Oneida reservation, with the amount of fifty four cents five mills per acre, for all the lands contained in the said mortgage, being the difference between the mean price as was calculated upon the lands south of the Genesee road in said reservation, and the mean price upon the whole tract as was originally intended by law. And shall on the first Tuesday of July next, debit the said Peter Smith with the amount of the arrearages of interest, which may then remain unpaid on said mortgage, which amount shall be added to the principal, and to be paid in same manner as the residue of the said mortgage: *Provided always,* that neither the said Peter Smith, nor any grantees under him shall be entitled to any of the benefits, contained in the provisions of the first section of this act.

And be it further enacted, That on the said Peter Smith, his heirs or assigns producing to the comptroller any bonds executed to the people of this State, and payable in ten years with the interest annually at the rate of six per cent per annum, accompanied by mortgages to secure the payment of the same respectively, duly acknowledged and registered, on lands mortgaged as aforesaid by the said Peter Smith in the Oneida reservation together with satisfactory proof, that the lands described in such mortgages are worth the sums expressed therein, and that the said bonds and mortgages were given in consequence of a fair and bona fide purchase of the lands described therein, made by the persons

who executed the same, of the said Peter Smith, his heirs, or assigns, that then the comptroller shall credit the said Peter Smith the amount of such bonds and mortgages, upon the mortgage given by him as aforesaid.

And be it further enacted, That whenever the principal and interest secured by any such mortgages shall be paid, the lands comprised therein respectively shall be and hereby are released and discharged from the mortgages given to the people of this State thereon. *Provided always,* that satisfactory proof shall be given to the comptroller on the production of any such bonds and mortgages as aforesaid by the said Peter Smith, his heirs, or assigns that the lands contained in any such mortgages are not greatly undervalued; *and provided also,* that the sum of twenty five dollars shall be paid upon the production of the said bonds and mortgages for every hundred acres contained therein, and so in proportion, and which sum shall be credited on the mortgage given by the said Peter Smith to the people of this State.

And be it further enacted, That the benefit of this act shall not be extended to the said Peter Smith his heirs, or assigns beyond the period of two years from the passing hereof.

And be it further enacted, That the comptroller shall stay all prosecutions already commenced, or which are by law directed to be commenced against the purchasers at auction of the Oneida Cayuga and Onondaga reservations, for eight months from the passing of this act.

CHAP. LXI.

An ACT *for the Relief of the Purchasers of Land in the Cayuga, Oneida and Onondaga Reservations.*

Passed March 28th, 1803.

WHEREAS it is represented to the Legislature, by the purchasers of lands in the Cayuga, Oneida and Onondaga reservations, that the immediate payment of the whole amount of the interest due to the state for their purchases, and the payment of such part of the principal as will soon become due, would greatly embarrass them in their present situation: Therefore,

I. *BE it enacted by the People of the State of New York, represented in Senate and Assembly,* That there be allowed to the said purchasers nine months from the first day of May next, for the payment of the one half of the interest due, and to grow due on the said purchases, and the term of one year from and after the expiration of the said nine months, for the payment of the residue of the said interest.

II. *And be it further enacted,* That the time of payment of the principal sums due from such of the said purchasers as shall pay the interest due on their respective purchases in manner aforesaid, shall be extended and paid in four equal instalments, that is to say, the first on the first Tuesday of July, in the year one thousand eight hundred and eight; the second on the first Tuesday of July, in the year one thousand eight hundred and nine; the third on the first Tuesday of July, in the year one thousand eight hundred and ten; the fourth and last on the first Tuesday of July, in the year one thousand eight hundred and eleven; and that the comptroller stay all prosecutions against such of the said purchasers as shall pay the interest due on their said purchases as above directed.

III. *And be it further enacted,* That it shall be the duty of the comptroller, to prosecute without delay such of the said purchasers as shall refuse or neglect to pay into the treasury, within the respective periods above limited, or either of them, the interest due or to grow due on the said purchases as aforesaid.

IV. *And be it further enacted,* That in all cases where debts are due to the people of this state, by several mortgages, contracts or obligations, executed by the same person, only one suit shall be commenced against the debtor or his representatives for the monies so due.

V. *And be it further enacted,* That the payments which have heretofore been made, on account of any of the said purchases in the Oneida, Onondaga and Cayuga reservations shall be applied towards discharging the interest due on such purchases, and in case such payment shall exceed the interest, the excess shall be applied to the reduction of the principal of the said purchases.

VI. *And be it further enacted,* That the second section of the act, entitled " An act granting relief to purchasers of lands in the late Onondaga and Cayuga reservations," shall be and is hereby extended to all persons who were entitled by virtue of any former statute of this state, to the right of pre-emption to any lands situate in the late Cayuga reservation.

CHAP. CLI.

An ACT *to amend an act, entitled "an act for the relief of the purchasers of land in the Cayuga, Oneida and Onondaga reservations," passed the 28th day of March, 1803.*

Passed April 6th, 1808.

WHEREAS it is represented to this legislature, by the purchasers of lands in the Cayuga, Oneida and Onondaga reservations, that many of them did not avail themselves of the

benefit of the act, entitled "an act for the relief of purchasers of lands in the Cayuga, Oneida and Onondaga reservations," passed the 28th day of March, 1803. *And whereas,* under the present embarrassed state of our public affairs the immediate payment of the whole amount of the interest and of the principal due to the state from said purchasers would greatly distress and embarrass them. Therefore,

Be it enacted by the people of the state of New-York, represented in senate and assembly, That there shall be allowed to the said purchasers of the Cayuga, Oneida and Onondaga reservations, one year from the seventh day of July next, for the payment of one fourth part of the interest due and to grow from the said purchasers, and the term of two years from the said seventh day of July, for the payment of one other fourth part of the said interest, and the like yearly extended periods, for the payment of the residue of said interest, and in like proportion.

And be it further enacted, That the time of payment, of the principal due from such of the said purchasers as shall pay the interest due from them respectively, in manner aforesaid, shall be extended, and the said principal shall be paid in six equal instalments, that is to say: the first instalment on the seventh day of July, in the year one thousand eight hundred and twelve, the second on the seventh day of July, in the year one thousand eight hundred and thirteen, the third on the seventh day of July, in the year one thousand eight hundred and fourteen, the fourth on the seventh day of July, in the year one thousand eight hundred and fifteen, the fifth on the seventh day of July, in the year one thousand eight hundred and sixteen, and the sixth on the seventh day of July, in the year one thousand eight hundred and seventeen; and that the comptroller stay all prosecutions against such of the said purchasers as shall pay the interest due on the said mortgages as aforesaid, and the expenses of prosecution if any have been incurred.

And be it further enacted, That it shall be the duty of the surveyor-general of the state, to execute to Alfred Edson, or his assigns, or to such person as he or they shall nominate, a conveyance in fee of lot number fifty three, in the first allotment of New-Petersburgh, in the late Oneida reservation: *Provided,* the said Alfred, or the occupants of said lot, claiming under him, shall produce to the said surveyor general satisfactory proof of his or their being entitled, as sub-lessees of Peter Smith, to the pre-emption of said lot of land, under the acts in that behalf provided; and shall secure by mortgage, as near as may be conformably to the forms prescribed to be taken from such sub-lessees, such sum per acre for said lot as was exacted from the said other sub-lessees in said tract, computing interest thereon, and deducting such remission of interest as has been granted to the said other sub-lessees by an act for that purpose: *And provided further,* That the said survey-or-general shall not require for his satisfaction the production of the original lease from the said Peter Smith, if reasonable evidence shall be offered him of the contents and loss thereof.

And be it further enacted, That all such persons as were purchasers and actual owners of land in the late Oneida, Cayuga and Onondaga reservations, on the 3d day of April, one thousand eight hundred and one, who did not avail themselves of the benefit of the act, entitled "an act for the relief of the purchasers of lands in the late Oneida, Onondaga and Cayuga reservations," passed the 3d day of April, one thousand eight hundred and one, and who had on the 11th day of April, one thousand eight hundred and four, made improvements and actual settlements thereon, to the value of fifty dollars, shall be and are hereby entitled to the same remission of interest as though they had been actual settlers at the time of passing the said act: *Provided,* That satisfactory proof thereof be produced to the comptroller, within nine months after the passing of this act: *And*

provided further, That Peter Smith, and owners of land deriving title under him, shall not be included within the purview of this act, nor entitled to its benefit.

CHAP. CXVII.

An ACT *granting further Time for the Payment of certain Monies due to the State, and for other Purposes.*

Passed April 2, 1810.

BE *it enacted by the People of the State of New-York, represented in Senate and Assembly,* That such of the purchasers of lands in the Cayuga, Onondaga and Oneida reservations, notwithstanding their neglect to pay by the seventh day of July last, the one fourth part of the interest then due on their respective mortgages to the state, agreeably to the provisions of the act passed the sixth day of April, in the year one thousand eight hundred and eight, entitled "an act to amend an act entitled an act for the relief of the purchasers of land in the Cayuga, Oneida and Onondaga reservations," passed 28th March, 1803, who shall on or before the seventh day of July next, pay the one half of the interest which may then be due, and on or before the seventh day of July, which will be in the year one thousand eight hundred and eleven, pay the whole of the interest which may then be due on their respective mortgages, and shall thereafter annually pay the interest and the instalments of principal as required by said act, shall be allowed the like extended periods for the payment of the principal due on their respective mortgages, as if they had not neglected to pay the one fourth of the interest due the seventh of July

last; *Provided however,* That this provision shall not be considered as extending to mortgages already in a train for collection by the attorney-general, unless those whose mortgages are already in a train of collection shall, on or before the first day of May next, pay one half of the interest which shall then be due on their respective lots, and pay all costs which has or may accrue by reason of the foreclosure of said mortgages, and those who shall so do shall have the same extended periods for the payment of the money due from them to the state as is mentioned in this act.

II. *And be it further enacted,* That all other persons now indebted to the state, either by bond or mortgage, for purchase monies of lands sold to them by the state, be and they are hereby allowed until the first day of September next, to pay the interest which they may respectively owe on such bonds or mortgages, and all such as shall then pay the whole of the interest which may be due from them shall be allowed until the first day of September, in the year one thousand eight hundred and eleven, to pay the first instalment of principal which is now due or that may then remain due against them respectively: *Provided however,* That this provision shall not be construed to extend to persons indebted for lands sold for the purpose of raising money for opening and improving roads.

III. *And be it further enacted,* That the comptroller be and he is hereby authorized at the expense of this state to publish in as many newspapers as he may deem necessary not exceeding four, and for any time not exceeding three months, the two first sections of this act; and that he also be authorized at any time hereafter in the same way to publish such laws or parts of laws as may at any time pass respecting debts due to the state, and which he may think it necessary to publish for the information of the persons indebted: *Provided* the expense of such publications shall not in any one year exceed the sum of fifty dollars.

IV. *And be it further enacted,* That the treasurer be and he is hereby directed on the warrant of the comptroller, to pay to Archibald M'Intyre the sum of three dollars and fifty-six cents, being the amount of the expense incurred by him for causing to be published the first section of the act, entitled "an act for granting further time for the payment of certain monies due to the people of this state," passed the seventeenth day of March last.

CHAP. CCXVII.

An ACT *reviving the fourth Section of an Act, entitled "An Act to amend an Act for the Relief of the Purchasers of Land in the Cayuga, Oneida and Onondaga Reservations, passed the 6th April, 1808.*

Passed April 9, 1811.

BE *it enacted by the People of the State of New-York, represented in Senate and Assembly,* That the provisions of the fourth section of the act to amend an act, entitled "an act for the relief of the purchasers of land in the Cayuga, Oneida and Onondaga, reservations," passed the 6th day of April, 1808, be and the same is hereby revived: *Provided,* That satisfactory proof by the person claiming such remission of interest be produced to the comptroller within nine months from the passing of this act.